IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

O.P.No.734 of 1998(K)

PETITIONER:-

SAINABA SYED MOHAMMAD.
THOTTUPARAMBIL HOUSE, CHANGANACHERRY.

BY ADV. SRI.K.RAVINDRANATHAN NAIR
SRI.S.SOMAN

RESPONDENTS:-
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1. STATE OF KERALA,
BY THE CHIEF SECRETARY TO GOVERNMENT,
THIRUVANANTHAPURAM.

2. TAHSILDAR, CHANGANACHERRY.

3. VILLAGE OFFICER, CHANGANACHERRY.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF DEMAND NOTICE DATED 31.7.1996 NO.E4.7549/96(b) ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

EXT.P2 - TRUE COPY OF DEMAND NOTICE NO.E4.7580/1997 DATED 23.9.1997 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS:
--- NIL.

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NO. 734 OF 1998 K

Dated this the 9th August, 2007

JUDGMENT

H.L.DATTU, C. J.

The petitioner is the owner of a two storeyed building, bearing Nos.44/4A within the Municipal limits of Changanacherry.

2. The Tahsildar, who is the competent authority under the provisions of the Kerala Building Tax Act, has completed the assessments and has levied building tax in a sum of Rs.86,400/-. Without questioning the correctness or otherwise of the same before the authorities provided under the Statute, the petitioner has approached this Court for the following reliefs:

> "i) by an appropriate writ, direction or order call up the records and files leading to and culminating in Ext.P2 demand, and quash Ext.P2;
>
> ii) declare that Sections 5 and 6 of the Amending Act 3 of 1992 are unconstitutional and void;
>
> iii) further strike down the Kerala Building Tax Act 7 of 1975 Amended by the Amendment Act 3 of 1992 as unconstitutional and void;
>
> iv) declare that the Kerala Finance Act 23 of 1996 in so far as it substituted the schedule relating to the rate of building tax are unconstitutional, void and illegal;"

3. In so far as the first prayer is concerned, in our view, if for any reason, the petitioner is aggrieved by the orders passed by the Tahsildar under the provisions of the Kerala Building Tax Act, she has got a right of

appeal and a revision before the various forums created under the Statute itself. Therefore, the first relief sought for by the petitioner cannot be granted by us.

4. In so far as the second prayer is concerned, the same requires to be granted in view of the law laid down by this Court in **Shirly** v. **State of Kerala** (2006(2) KLT 306). Accordingly, the provisions of Section 5(2) is struck down on the ground that the same is arbitrary and violative of the constitutional provisions.

5. In so far as the third prayer is concerned, the appeal and revisional remedies are provided under the Act before the various forums created under the Statute itself. The various forums created under the Statute can definitely impose certain conditions to avail those remedies. In that view of the matter, the third prayer sought for in the Original Petition also cannot be granted by us. Therefore, we pass the following:

O R D E R

1) The Original Petition is disposed of.

2) If for any reason, the petitioner is aggrieved by the orders of assessment passed by the Tahsildar under the provisions of the Kerala Building Tax Act, he is permitted to prefer an appropriate appeal before the Appellate Authority within thirty days from today. If such an appeal is filed within the time granted by this Court, the Appellate Authority shall consider the same on merits without reference to the period of limitation.

3) Provisions of Section 5(2) of the Building Tax Act is struck down by following the dicta of this Court in 2006(2) KLT 306 (supra).

3) The prayer No.3 is rejected.

4) In the facts and circumstances of the case, parties shall bear their costs.

Consequent to the order passed in the Original Petition, C.M.P.No.1234 of 1998 is dismissed.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.NO. 4275 OF 1996 H

JUDGMENT

9th August, 2007